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Common Knowledge: Epistemology and the Beginnings of Copyright Law

Abstract

Literary critics' engagement with copyright law has often emphasized ontological questions about the relation between idealized texts and their material embodiments. This essay turns toward a different set of questions—about the role of texts in the communication of knowledge. Developing an alternative intellectual genealogy of copyright law grounded in the eighteenth-century contest between innatism and empiricism, I argue that jurists like William Blackstone and poets like Edward Young drew on Locke's theories of ideas to articulate a new understanding of writing as uncommunicative expression. Innatists understood texts as tools that could enable transparent communication through a shared stock of innate ideas, but by denying the existence of innate ideas empiricists called the possibility of communication into question. And in their arguments for perpetual copyright protection, eighteenth-century jurists and pamphleteers pushed empiricism to its extreme, linking literary and economic value to the least communicative aspects of a text.

Keywords

English literature, 1600-1699, Seventeenth Century, Locke, John (1632-1704), *Essay concerning Human Understanding* (1690), knowledge, idea, epistemology, copyright law, Cambridge Platonists, Young, Edward (1683-1765), *Conjectures on Original Composition* (1759), Blackstone, Sir William (1723-1780), 1700-1799, Eighteenth Century

Disciplines

English Language and Literature | Epistemology | History of Philosophy | Intellectual History | Intellectual Property Law | Law and Philosophy | Legal History | Literature in English, British Isles

Common Knowledge: Epistemology and the Beginnings of Copyright Law

JONATHAN SCOTT ENDERLE

WHAT IS A TEXT? THAT QUESTION IS FRAUGHT WITH ONTOLOGICAL uncertainty. Are texts nothing more than their physical manifestations? Or can we meaningfully speak of texts as abstractions that transcend the context of their embodiment? Literary scholars and copyright lawyers have generally held different views on these questions. In recent decades, interest in material culture has spurred many literary scholars to identify texts with specific objects: quires of printed paper bound with fabric, board, and glue; bundles of handwritten pages tied with twine; or corporeal, albeit ephemeral, patterns of electrical signals rendered on a screen. But that approach jars with the doctrines of copyright law, which imagines texts as intangible, immaterial, and wholly indifferent to the arbitrary physical bodies—books, manuscripts, or screens—that serve as their vessels. For that reason many literary scholars since the 1980s have looked askance at copyright law, even as they have emphasized its historical significance; a view of texts as things that transcend their contingent material origins is bound to be met with skepticism by a critical mainstream suspicious of the metaphysics of presence and grounded in the methods of historical materialism. At its most skeptical, this mainstream regarded copyright as an ideological imposture, or even as a quasi-religious institution.¹

Ontological concerns like these have structured thought about copyright since the beginnings of the Romantic period. In the late eighteenth century, an anonymous German bookseller wrote that “the book is not an ideal object. . . . [I]t is a fabrication made of paper. . . . [I]t does not contain thoughts; these must arise in the mind of the comprehending reader. It is a commodity produced for hard cash,” while Johann Fichte argued to the contrary that a book embodies an irreducible fragment of its author’s intellect: “each individual has

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his own thought processes, his own way of forming concepts and connecting them. . . . [N]o one can appropriate his thoughts without thereby altering their form. This latter thus remains forever his exclusive property” (qtd. in Woodmansee 443–45). These competing accounts agree that the legitimacy of copyright depends on the relations we posit between idealized forms and physical objects. This way of thinking postdates the rise of copyright law in England. Fichte’s Romantic, post-Kantian idealism and the bookseller’s proto-Marxist materialism were both gestating at least eighty years after the British Parliament passed the first copyright law, the Statute of Anne, in 1710.

This essay outlines an intellectual history of the beginnings of copyright law unencumbered by these characteristically nineteenth-century questions about the ontological status of the material and the ideal, which continue to shape literary scholarship’s engagement with copyright. Rather than ask what texts are, I ask what texts do. Scholars have seen copyright either as the beginning of a progressive new regime of intellectual property or as an early symptom of capitalism’s drive to commoditize ever-more-abstract entities. Neither of these points of view adequately characterizes the attitudes of the thinkers and jurists of the eighteenth century. To gain a clearer picture of the complex and divergent interpretations of copyright law in eighteenth-century Britain and their impact on textual production, reproduction, distribution, and reception, critics and scholars need to shift their attention from ontological questions to epistemological ones. What matters is not whether there can or ought to be such a thing as incorporeal property. What matters are the ways eighteenth-century individuals conceptualized their own practices as authors and readers. In some cases jurists and pamphleteers quibbled over ontological questions, but their quibbles masked deeper divisions, over knowledge—what it is, where it comes

from, how it is transferred, and whether it can ever be truly private. These questions concerned not what texts were but what they did—the roles they played in the creation, development, and dissemination of knowledge.

By bracketing ontological concerns in favor of the epistemological question *What do texts do?*, this essay explores an alternative intellectual genealogy of copyright law that troubles familiar associations between literary property, textual stability, interpretive closure, and transcendental authorial presence. The material turn in literary studies has seemed to repudiate those closely linked ideas. The material text, subject to contingency and decay, is an irreducibly noisy channel of communication. The literary work it embodies is not the immutable creation of a sovereign poetic will; it is the fluid product of multiple collaborators, filtered through a divided poetic consciousness and misprinted on fragile slips of paper. Copyright relies on the text’s transcendence, and it is unsettled by the text’s corporeality. But in eighteenth-century Britain this neat alignment of categories did not hold. Many of copyright’s boldest advocates emphasized textual contingency and instability, while its most stubborn detractors insisted on the fixity and ideality of the literary work. From the perspective of many eighteenth-century thinkers, literary property is affirmed by an authorial absence, an indication that the text has failed to serve as a transparent channel of communication, fully connecting readers and authors. A history of copyright that can make sense of this surprising configuration of concepts could produce new insights into questions that are driving current trends in literary thought—questions about the relation between the phenomenal and the given and their role in the production and consumption of communicative matter.

This essay tells such a history, grounded in seventeenth- and eighteenth-century epistemological debates that pitted *innatism* against empiricism. Innatists held the view

that all individuals share the same intrinsic ideas from birth, while empiricists believed that ideas are produced only by experience and are therefore unique to individuals. The contest between these positions progressed from the mid-seventeenth to the end of the eighteenth century, beginning as a disagreement among philosophers, the most influential of whom were a group of innatists known as the Cambridge Platonists and the empiricist John Locke. It then slowly filtered into the wider public sphere through multiple channels, ultimately structuring legal discourse in ways that directly influenced mid-eighteenth-century copyright debates. These latter debates ostensibly concerned the duration of copyright protection; copyright perpetualists argued that copyright protection should never expire, while their opponents argued that copyright protection should be limited in term. But as they progressed, these debates began to consider questions about the nature of communication: Can ideas be held privately? Can they be transferred? If so, what enables their transmission? And, most centrally, what do texts do when they communicate knowledge?

As scholars have long recognized, Locke's labor theory of property played a prominent role in these debates. Property, Locke argued, arises when an individual labors to create something new, and copyright perpetualists sought to extend that reasoning from bodily to mental labor.² But Locke's epistemological theories were far more significant to the copyright debate than the labor theory of property, which could not apply to textual works unless they were produced by private labor, a claim that innatists questioned. By rejecting the notion that some ideas are innate and universal, constituting a shared intellectual commons, Locke laid the groundwork for a new conception of ideas as private—and of the texts that expressed them as private property. Not yet stymied by the idea-expression dichotomy encoded in today's copyright law, copyright per-

petualists saw in this Lockean view of ideas an opportunity to extend copyright protection indefinitely. However, by denying the existence of innate ideas, Locke destabilized the theories of communication that were implicit in innatist thought, for if we have no body of common ideas to draw on, how can we begin to understand each other?

To demonstrate how defenders of perpetual copyright and their opponents answered this question, I first take up the philosophical discourse around ideas in seventeenth- and eighteenth-century Britain, examining the views of the Cambridge Platonists and Locke's refutation of their assertions. In doing so, I show how Locke challenged the dogma that ideas are universally communicable. I then analyze Edward Young's *Conjectures on Original Composition* to reveal how Young attacks the same dogma from an innatist perspective. In the following section I describe the roles that Locke's and Young's positions played in *Tonson v. Collins* (1762), the case in which "the basic shape of the literary-property debate was realized" (Rose, *Authors* 78); this case illustrates the multiple ways that jurists conjoined innatist and empiricist views of literary ideas. I argue that these bodies of evidence show that the rise of modern copyright law was accompanied by a radical transformation in ideas about communication, which linked literary and economic value to the least communicative aspects of a text. Innatists had imagined language as a natural, transparent extension of human thought, but eighteenth-century copyright law instead enshrined a way of thinking about what texts do that foregrounds and privileges the moments when meaning escapes us, when communication breaks down—moments of interruption in the smooth functioning of language.

Epistemology and the Intellectual Commons

In 1739 David Hume wrote that "the principle of innate ideas . . . is now almost universally

rejected in the learned world” (106). As support for this sweeping claim, he offers one terse footnote: “See Mr. Locke; chapter of power.” That Hume felt he need only invoke Locke’s name with a vague citation to make his point suggests a widespread knowledge of Locke’s argument among Hume’s readers. However, this knowledge did not result in the near universal assent that Hume described. The doctrine of innate ideas remained influential after Locke rejected it, especially among religious thinkers, who often used variations on the doctrine to defend the universality of moral judgments.³ Far from being easily dismissed, innatism persistently posed challenging questions to the philosophers who hoped to reject it, and it shaped many developments in eighteenth-century epistemology.

Innatism had experienced a surge of popularity in the mid-seventeenth century, especially among religious thinkers, when a loose group of Cambridge-educated divines took up various forms of the doctrine as part of their turn away from Aristotelian scholasticism. Though they drew from a wide range of philosophical strains, including new developments in the emerging sciences, they all partook of some variety of neoplatonism, and among historians of philosophy they are collectively known as the Cambridge Platonists (Hutton, “Lord Herbert” 20–34). Among the Cambridge Platonists were Benjamin Whichcote (1609–83), Henry More (1617–87), Ralph Cudworth (1617–88), John Smith (1618–52), and Nathanael Culverwel (1619–51), each of whom formulated some version of innatism in support of a rational theology. Culverwel described a “sacred Manuscript . . . writ by the finger of God himself in the heart of man” (34); John Smith spoke of “some radical principles of knowledge . . . sunk into the souls of men” (16), principles that can only be fully perceived and understood by those who “shut the eyes of sense, and open that brighter eye of our understandings, that other eye of the soul” (19). For Smith and Culverwel, as for

many other Cambridge Platonists, this innate rational faculty facilitated the individual pursuit of divine truth, which one might carry out independent of any worldly authority.

Though their primary concerns were theological, several of the Cambridge Platonists also constructed sophisticated epistemological theories. Henry More, in *An Antidote against Atheism* (1653), laid out a theory of innate knowledge that drew liberally from Plato. “There is an active and *actuall Knowledge* in a man,” More wrote, “of which . . . outward objects are rather the reminders then the first begetters or implanters” (19–20). To elucidate this claim, he offers the following evocative metaphor:

Suppose a skillful *Musician* fallen asleep in the field upon the grasse, during which time he shall not so much as dream any thing concerning his musically faculty, so that in one sense there is no *actuall skill* or Notion nor representation of any thing musical in him, but his friend sitting by him that cannot sing at all himself, jogs him and awakes him, and desires him to sing this or the other song, telling him two or three words of the beginning of the song, [the *Musician*] presently . . . sings the whole song upon so slight and slender intimation: So the *Mind* of *man* being jogg’d and awakened by the impulses of outward objects is stirred up into a more full and cleare conception of what was but imperfectly hinted to her from externall occasions; and this faculty I venture to call *actuall Knowledge* in such a sense as the sleeping Musicians skill might be called *actuall Skill* when he thought nothing of it. (20–21)

More plays on two meanings of *actual*: the first is roughly synonymous with “enacted” or “manifest” as opposed to “potential” or “latent,” while the second is roughly synonymous with “active”—in the way that actual sin, as distinct from original sin, is the product of individual action. The sleeping musician’s skill is not actual in the first sense; his mind is empty, and whatever skills he has are latent and im-

perceptible. But his skill is actual in the second sense, because it may come into being as a result of the activity that follows his arousal.

Likewise, innate knowledge is actual in that it arises through the activity of the mind after it has been “jogg’d and awakened” or “stirred up” by “outward objects.” These outward objects do not generate knowledge; they only activate it. To support this claim, More considers geometric figures such as circles and triangles, asking how we can have knowledge of these figures if they do not exist in their perfect form anywhere in nature. The only possible answer, he concludes, is that our knowledge of these forms precedes any experience of nature (22). This argument, his description of outward objects as the “reminders” of preexisting knowledge, and his metaphoric account of sleeping knowledge “jogg’d and awakened” all vividly recall arguments and metaphors found in Plato’s writings—most notably in the *Meno*, in which Socrates attempts to demonstrate that “all learning is but recollection” by walking an untutored boy through a geometric proof. By the end of Socrates’s demonstration, the youth understands the proof and agrees that it is valid, though Socrates has done nothing but ask him questions. Therefore, Socrates insists, the boy “has had true opinions in him which have only to be awakened by questioning to become knowledge” (86).

The metaphor of sleeping knowledge suggests that both More and Plato offered what historians of philosophy such as John Yolton have called a dispositional account of innateness, in which innate ideas are not immediately present to the mind but are rather part of the mind’s implicit structure, ready to be called forth by a particular set of circumstances or through some active intellectual process.⁴ More writes, “I do not mean that there is a certain number of *Ideas* flaring and shining to the *Animadversive faculty* like so many *Torches* or *Starres* in the *Firmament* to our outward sight, or that there are

any *figures* that take their distinct places, & are legibly writ there like the *Red letters* or *Astronomical Characters* in an *Almanack*”; rather, there is “an active sagacity in the Soul, or quick recollection as it were, whereby some small business being hinted unto her, she runs out presently into a more clear and larger conception” (20). Dispensing with the naive literalist conception of innatism epitomized by Culverwel’s “sacred Manuscript,” More turns to the language of hints and recollections, showing that partial, incomplete, or latent ideas may still be considered innate.⁵

More’s innatism prefigured a more sophisticated version defended by Ralph Cudworth, whose works, especially the posthumous *Treatise concerning Eternal and Immutable Morality* (1731), influenced many eighteenth-century thinkers. The editor of the treatise, Edward Chandler, wrote a preface positioning it as an important contribution to contemporary debates about ethical reasoning and moral certainty (Hutton, Introd. xiv–xv), and like the work of other Cambridge Platonists the treatise supported its claims with an innatist epistemological framework. However, Cudworth largely discards the metaphoric language of Culverwel, Smith, and More, opting instead for a somewhat technical vocabulary: the soul possesses, Cudworth repeats insistently, “an innate cognoscitive [cognitive] power . . . of raising intelligible ideas and conceptions of things from within itself” (75). Cudworth is careful not to use *innate* to refer to ideas themselves; rather, the mind actively generates ideas through an innate power, which it can exercise without the aid of external stimuli. Cudworth’s formulation thus avoids certain ambiguities that attend More’s metaphor of the sleeping musician, in which innate ideas must be “jogg’d and awakened by the impulses of outward objects” and in which, though they must be awakened, innate ideas are nonetheless all but fully formed beforehand, having been learned at some point in the past. Cudworth’s

account is therefore both more innatist, in that external stimuli are not a prerequisite for the formation of innate ideas, and more dispositional, in that innate ideas do not exist at all in the mind before it exercises the innate power that enables their formation.

The works of the Cambridge Platonists provided crucial fuel for Locke's epistemological intervention.⁶ A full quarter of his *Essay concerning Human Understanding* (1689) was devoted to a closely argued refutation of the doctrine of innate ideas, which he summarizes as the "Opinion amongst some Men, That there are in the Understanding certain *innate Principles*; some primary Notions, κοινὰ εννοιαί [common notions], Characters, as it were stamped upon the Mind of Man, which the Soul receives in its very first Being" (48). Locke's language calls to mind both Nathanael Culverwel's "sacred Manuscript" and the "legibly writ" characters that More disavows. In other words, Locke is describing a nondispositional version of innatism, against which he launches a threefold attack. First, he challenges the "Universal Consent" argument—that because "certain Principles [are] universally agreed upon by all Mankind" these principles must be innate (49)—by pointing out that this argument could only support innatism if innatists could show that no other explanation of universal consent is possible. Second, he insists that this argument actually defeats innatism, because no example of universal consent exists; even statements that we might expect to produce universal agreement in fact produce disagreement or confusion in some cases. And third, he draws a sharp contrast between ideas acquired by individual pains and labor and ideas acquired through the bounty of nature—a kind of cognitive commons. In an argument that recalls his discussion of private property in the *Second Treatise of Government* (1689), he criticizes innatists for claiming that ideas developed through reason are merely part of a natural bounty. That claim, he argues, ignores

the essential contribution of individual labor to the development of those ideas.

With his final argument, Locke attempted to associate innatism with intellectual laziness, but his arguments inadvertently overlapped with those of the Cambridge Platonists when it came to the notion of dispositions. Locke's arguments against nondispositional innatism were less effective against dispositional innatists like More and Cudworth, who agreed with Locke that the development of innate knowledge required mental activity—as More's "actual Knowledge" attests. To More and Cudworth, we are innately disposed to act in ways that produce particular ideas, but we may be prevented from doing so. Seeming to recognize the challenge of dispositional innatism, Locke claimed that their position leads to a conceptual collapse: if the ideas that result from mental labor are innate, then all possible ideas must be innate. In that case, "all Propositions that are true, and the Mind is capable ever of assenting to, may be said to be in the Mind," writes Locke, and "[s]o the Mind is [made] of all Truths it ever shall know." Locke seems to hope that his readers will find such a position counterintuitive, but the strongest argument Locke can offer against it is that it is "a very improper way of speaking; which, whilst it pretends to assert the contrary, says nothing different from those, who deny innate Principles" (49–50). Locke ignores the fact that a dispositional innatist could use the same line of reasoning against him; Locke's own argument also leads, albeit in a different direction, to a conceptual collapse. At this moment in the *Essay*, the dispute between innatism and empiricism seems to descend into a semantic disagreement, and the two epistemological views appear to be substantively equivalent. Their equivalence would reemerge in later debates about copyright law.

The remainder of Locke's essay offers a detailed account of how ideas arise in the minds of individuals. Simple ideas, which are the direct and indivisible products of

experience, combine to form complex ideas, which Locke further taxonomizes. Locke also subdivides experience into two “Fountains of Knowledge, from whence all the *Ideas* we have . . . do spring” (104), which he names “*Sensation*” and “*Reflection*.” *Sensation* denotes experience of the physical world through the senses, while *Reflection* describes what might be called inward experience—the perception of one’s own mental processes. The claim that all ideas arise from either sensation or reflection has an important ramification for any discussion of copyright: ideas are strictly private, because both our sensory experiences and our inward experiences are private. The concept that ideas are private leads Locke to some startling conclusions about language, which he hints at early in his discussion of ideas: “if it should happen that any two thinking men should really have different ideas, I do not see how they could discourse or argue one with another” (180). If language could communicate ideas, there would be no such bar to discourse, but for Locke language communicates no ideas at all.

Where does this leave the notion of communication? The concept of innate ideas gave the Cambridge Platonists a ready-made theory of communication, one that seemed so straightforward and obvious that they hardly needed to articulate it (Dawson 619). Innate ideas expedite the construction of linguistic infrastructures, giving speaker and writer, listener and reader access to the same cognitive scaffolding. To understand the meaning of a text, readers need only seek within themselves the ideas under discussion; the ideas remain the same, no matter in whose mind they appear. But perhaps this theory of communication was too strong: if everyone already has access to exactly the same ideas, why is communication ever necessary? Keeping in mind Locke’s emphasis on the labor required to produce ideas, one might argue that communication is necessary precisely because some ideas are not innate.

Conversely, Locke’s theory of communication may have been too weak. His rejection of the universality and innateness of ideas suggested that communication is not as straightforward a process as his precursors had assumed, and at times in the *Essay* Locke seemed even to doubt the possibility of communication. He did eventually offer an account of communication based on universal ideas, but these ideas are universal not in a necessary but in a practical sense: their universality is predicated on the assumed uniformity of human experience and human physiology. Should parties to a conversation have different ideas, because either their experiences or their physiologies radically differ, that universality fails, and with it any straightforward attempt to communicate.

These were central issues for eighteenth-century copyright law because cases such as *Tonson v. Collins* (1762) and *Millar v. Taylor* (1769) turned on the question of what a book communicates from author to reader—and what a book does not communicate. The term *communicate* comes from the Latin *communicare*, to make common; and to prevail in court, copyright perpetualists had to argue for a failure of communication in this sense. They had to show how the publication of ideas might *not* make them common. Locke’s account of ideas thus appears more congenial to copyright perpetualism than the Cambridge Platonists’ account does, insofar as it theorizes the possibility of communicative failure. By taking a Lockean view of ideas, copyright perpetualists were able to argue that the transmission of texts does not entail the transmission of ideas; far from being unprotectable, as in modern copyright law, ideas were the inalienable property of their author. However, Locke’s epistemology was not the only option copyright perpetualists had. It was also possible to imagine a version of innatism that entailed a similar communicative failure: the innatism espoused in Edward Young’s *Conjectures on Original Composition*.

Edward Young's Synthesis

Young's *Conjectures* (1759) has often been regarded as a seminal text in the history of authorship. Through his writing on originality and genius, Young influenced the course of romanticisms in Great Britain and Germany, and in doing so he strengthened the case for authorial copyright. As Martha Woodmansee has argued, ideas popularized by Young's essay (which was translated into German the year of its publication) bolstered a growing demand for copyright legislation among German authors of the Romantic era (430). Likewise, Mark Rose finds Young's thoughts congenial to the ascent of proprietary authorship in Great Britain, insofar as they anticipate "the organic analogy of the romantics" ("Author" 61). But both Rose and Woodmansee associate Young with copyright law by reading *Conjectures* as a proto-Romantic text, and their arguments must therefore recontextualize Young's essay geographically or temporally. When one reads *Conjectures* in the immediate context of its publication, however, a different picture of Young's relation to copyright emerges. Forty years before Wordsworth took up the "organic analogy" at the heart of Young's essay, *Conjectures* read not as a proto-Romantic text but as a post-Platonic text—a modulated continuation of ideas that Cudworth and other Cambridge Platonists had developed and defended a century before. In short, Young was an innatist.

The linchpin of Young's innatist argument in *Conjectures* is another analogy: between genius and conscience. *Conscience* denoted "inward knowledge," and in the early to mid-eighteenth century it was at the center of a dispute over the innateness of the faculty of moral judgment.⁷ As late as 1744, Jonathan Swift had insisted that *conscience* "properly signifies the Knowledge which a Man hath within himself of his own Thoughts and Actions" and that such knowledge is useless for the purposes of moral judgment unless supplemented by the study of scripture (24). Swift's quasi-empirical

stance here allies him with Locke and puts him at odds with followers of the Cambridge Platonists such as Joseph Butler and Anthony Ashley-Cooper, third earl of Shaftesbury, both of whom viewed conscience as an innate faculty of moral judgment.⁸ By the time Young wrote *Conjectures*, conscience had become firmly associated with Shaftesbury's and Butler's antiempirical view, and Young uses the term accordingly: "With regard to the Moral world, *Conscience*, with regard to the Intellectual, *Genius*, is that God within. Genius can set us right in Composition, without the Rules of the Learned; as Conscience sets us right in Life, without the Laws of the Land" (30–31). Conscience is "that God within," fully present in individuals before they learn institutional rules and at times perhaps even opposed to those rules. By characterizing conscience as a faculty that guides us "without the Laws of the Land," Young echoes Shaftesbury's critique of the claim, made famous by Thomas Hobbes, that the state is the only guarantor of individuals' moral behavior. Conscience, for Young and Shaftesbury, precedes institutions of law; likewise, Young insists, genius precedes institutions of learning.

In addition to being innatist, Young's conception of genius is dispositional. A writer "may possess dormant, unsuspected abilities," a fact that "is evident from the sudden eruption of some men, out of perfect obscurity, into public admiration, on the strong impulse of some animating occasion; not more to the world's great surprize, than their own." Genius hides its gifts, like More's sleeping musician, "till awakened by loud calls, or stung up by striking emergencies." Until then, a writer may remain "scarce less ignorant of his own powers, than an Oyster of its pearl, or a Rock of its diamond" (49–50). Like his philosophical precursors, Young preempts any argument that genius must not be innate because it is not apparent from birth. Genius need not be visible to be present.

Elsewhere, though, the difference between Young's innatism and the innatism of Shaftesbury and the Cambridge Platonists becomes more apparent. The Cambridge Platonists had held that innate ideas were also universal; similarly, Shaftesbury insisted that our "Sense of Right and Wrong" is a "first Principle in our Constitution & Make" (44), and he argued that the universality of conscience facilitates a natural process of community formation. But for Young genius is not universal and does not unite individuals into a community; genius creates distinctions between them. "Let thy Genius rise," he commands, "(if a Genius thou hast)" (53)—and much of Young's essay is dedicated to the problem of discovering whether one has genius or not. Combined with Young's dispositionalism, the belief that not all writers have genius produces a belletristic Calvinism; genius may emerge without prior indication, leaving would-be writers of genius to constantly seek signs of their place among the literary elect. "*Know Thyself*. . . Dive deep into thy bosom," exhorts Young, and "learn the depth, extent, bias, and full fort of thy Mind" (53), and if genius is to be found there, "Thyself so reverence as to prefer the native growth of thy own mind to the richest import from abroad" (54). But this holds only if one does indeed have genius: "as nothing is more easy than to write originally wrong; Originals are not here recommended, but under the strong guard of my first rule—*Know thyself*" (61). Without the support of genius, originality is a handicap, a literary vice.

It is in the context of this stark divide between literary haves and have-nots that Young links genius most visibly to property. The writer of genius who reverences himself, Young asserts,

will soon find the world's reverence to follow his own. His works will stand distinguished; his the sole Property of them; which Property alone can confer the noble title of an Au-

thor; that is, of one who (to speak accurately) *thinks*, and *composes*; while other invaders of the Press, how voluminous, and learned soever, (with due respect be it spoken) only *read*, and *write*. (54)

This passage marks a critical shift from the universalist innatism of the Cambridge Platonists to an exclusionary innatism—a novel version of innatism that is uniquely suited to form the basis of a property claim. One of the hallmarks of property, as Joseph Yates would insist a decade later in the milestone copyright case *Millar v. Taylor*, is that it grants "*sole and exclusive Enjoyment*" of an object (*Question* 73). But if ideas are both innate and universally held—even if only potentially—then such exclusive enjoyment is contrary to their nature. Young's theory of genius bypasses this problem, articulating a proprietary Platonism in which some ideas are indeed exclusively possessed. Anyone can imitate a work of genius, but imitation amounts to nothing more than a loan: "Learning is borrowed knowledge," while, by contrast, "Genius is knowledge innate, and quite our own" (36). This incommensurable gap between imitation and creation means that the "noble title of an Author" is nontransferable, a fact that Young reiterates through another organic metaphor: "An *Original* author is born of himself, is his own progenitor, and will probably propagate a numerous offspring of Imitators, to eternize his glory; while mule-like Imitators, die without Issue" (68).

Young's proprietary Platonism stands in stark opposition to many of Locke's ideas. For example, Locke's critique of innatism as a product and propagator of intellectual laziness applies to Young's arguments about genius just as well as it does to any of the Cambridge Platonists' arguments about "*actual Knowledge*" or "innate cognoscitive power." But despite their differences, Young and Locke agree that at least some kinds of ideas are exclusively held by the mind that

creates them and are strictly nontransferable—or, one might say, incommunicable. To be sure, ideas are incommunicable in Young's and Locke's accounts for different reasons; but both accounts hold out the possibility that authors retain something when they communicate through a work. That possibility of retention formed the basis of the property claim that William Blackstone and his allies made in the mid-century copyright cases.

Copyright and Communication

In April and May of 1759, the banker and bookseller Benjamin Collins printed, published, and sold copies of Joseph Addison and Richard Steele's *Spectator*. Collins was not the copyright holder; Jacob Tonson had purchased copyright in the work forty-seven years before. But since the only applicable copyright law, the Statute of Anne (1710), protected works for twenty-eight years, Collins could not be prosecuted under it; as far as the statute was concerned, the work had entered the public domain. Nonetheless, Tonson's heirs, his sons Jacob and Richard, brought a suit against Collins, claiming that he had invaded their literary property. The Tonsons argued that they retained copyright in the *Spectator* despite the limited term of the Statute of Anne: copyright, far from being the temporary consequence of a statutory monopoly, was literary property in the fullest sense. Like any other property, they maintained, it was protected in perpetuity by the common law, independent of any statute, and was recognized not only by ancient usage but also by reason and natural right.⁹

The plaintiffs in *Tonson v. Collins* were not the first to make such an argument, and the case did not set a lasting precedent; the Court of King's Bench refused to consider it further after finding that the plaintiffs and defendant were colluding in an effort to produce a ruling favorable to themselves and their fellow booksellers in the London

trade. Nonetheless, the case was historically significant because it featured two figures who would later participate in the precedent-setting cases *Millar v. Taylor* and *Donaldson v. Beckett* (1774). William Blackstone, the author of the influential *Commentaries on the Laws of England* (1765), was a counsel for the plaintiffs in *Tonson v. Collins* and went on to represent another London bookseller in *Millar v. Taylor* and to defend literary property before the House of Lords as one of twelve advisory judges in *Donaldson v. Beckett* (1774). Joseph Yates, the defendant's counsel in *Tonson v. Collins*, would take a place on the Court of King's Bench and write the dissenting opinion in *Millar v. Taylor*, setting forth a critique of literary property that remains salient after more than two hundred years.

The case was heard twice, in 1761 and 1762, before the Court of King's Bench, Lord Mansfield presiding as chief justice. Alexander Wedderburn argued for the plaintiffs at the first hearing and attempted to restrict the property claim of authors to the profits of publication. This was, he claimed, an incorporeal property right, but only in the sense that, for example, the right of way across a tract of land is incorporeal; such incorporeal rights in corporeal entities were by this time fairly well established in the common law. "When I speak of the Right of Property," declared Wedderburn, "I mean in the Profits of his Book; not in the Sentiments, Stile, &c" (*Tonson v. Collins* [1761] 302). Wedderburn was hoping to sidestep the argument that sentiment and style are incorporeal, impossible to possess exclusively, and therefore incapable of supporting any property right whatsoever. However, when the case was heard a second time, in 1762, William Blackstone took Wedderburn's place and made a much bolder claim. Not content to sidestep the argument that sentiment and style are incorporeal and impossible to possess, Blackstone attacked it head-on. Quoting Edward Thurlow, the barrister who had argued for the defendants

in 1761, Blackstone insisted that a “‘literary Composition, as it lies in the Author’s Mind, before it is substantiated by reducing it into Writing,’ has the essential Requisites to make it the Subject of Property” (Tonson v. Collins [1762] 322).¹⁰ Although Blackstone then refers to Locke’s labor theory of property, the essential foundation of his argument is a Lockean view of ideas. While a literary composition

lies dormant in the Mind, it is absolutely in the Power of the Proprietor. He alone is intitled to the Profits of communicating, or making it public. The first Step to which, is cloathing our conceptions in Words, the only Means to communicate abstracted Ideas. Ideas drawn from external Objects, may be communicated by external signs; but Words only, demonstrate the genuine Operations of the Intellect. (323)

In this passage, the philosophical assumptions that underlie Blackstone’s argument immediately become clear. His distinction between “Ideas drawn from external Objects” and “abstracted Ideas” parallels the dichotomy developed by Locke and widely deployed in his *Essay concerning Human Understanding* (1689) to explain how abstractions such as numbers or geometric forms can arise from sense impressions. That parallel alone indicates that Blackstone was drawing not only from Locke’s political theory but also from his epistemological theory. More broadly, this passage shows that Blackstone cannot be thinking of ideas in an innatist way. The very notion that ideas in the mind are “absolutely in the Power of the Proprietor” directly contradicts any theory holding ideas to be universal and innate. Even if an idea is immediately present in just one mind, the mind of the so-called proprietor, a dispositional form of innatism would hold that it is potentially present in the minds of all others; the “proprietor” could do nothing to prevent any of them from acquiring it on their own.

For Blackstone, then, ideas are the product of individual experience and mental la-

bor—that is, sensation and reflection in the Lockean sense—and the right of property in ideas arises naturally from that fact.¹¹ Blackstone reinforces this line of reasoning with a subtle shift in diction over the course of his first argument. Initially, the word he uses most often to refer to mental equipment is *idea*, but as he continues he begins to favor another term: *sentiment*. Two paragraphs after asserting that we communicate by “cloathing our conceptions in Words, the only Means to communicate abstracted *Ideas*,” he performs a nearly parallel substitution: “Words are the Vehicle of *Sentiments*” (323; italics mine). He then insists that sentiment is the essence of literary property, stating that “[t]he Sentiment therefore is the Thing of Value, from which the Profit must arise” (323–24), though just a few paragraphs earlier he had argued that literary property is founded on “Occupancy in Ideas” (321). Blackstone appears to be using the words *idea* and *sentiment* interchangeably, but to treat the two terms as mere synonyms misses a range of important distinctions. When one examines the etymology of the two words, Blackstone’s shift appears strategic: *sentiment* is based on the same Latin root as *sense*, and in the eighteenth century it was still occasionally used to refer to sense impressions. In his *Enquiry concerning Human Understanding* (1748) David Hume used *inward sentiment* and *outward sentiment* to refer to roughly the same concepts that Locke had called *reflection* and *sensation*, thus associating the term *sentiment* with private experience. By contrast, the etymological root of *idea* is the Ancient Greek *ιδέα*, a term Plato had used to denote eternal forms. Insofar as it was linked to a philosophical tradition claiming that all mental objects are held in common, *idea* was a troublesome word for Blackstone, and he learned quickly to eschew it. Blackstone’s use of *sentiment* also placed him in a complex tradition of thought that attempted to reconcile theories of universal moral knowledge and judgment with

Lockean empiricism. It is beyond the scope of this essay to describe the full semantic range of the term, but just two years before Blackstone made his argument, Adam Smith had used *sentiment* to describe a model of emotional contagion and communicability in his *Theory of Moral Sentiments* (1759). That model depended on the Lockean assumption that all human beings share certain physical and mental structures; for Smith, as for Locke, if that assumption fails, so does communication. Smith's arguments were influenced by similar claims made by Hume and Frances Hutcheson, both of whom had reframed moral judgments as direct experiences by positing the existence of a "moral sense" subject to the same Lockean assumption (Carey 103). In each of these cases, *sentiment* signifies a break with innatism by acknowledging the possibility, however remote, that our ideas may be radically irreconcilable.

As these complexities illustrate, Blackstone's account of ideas corresponds closely to Locke's, but not perfectly. Blackstone speaks of ideas being communicated, whereas for Locke communication may occur, but ideas are never themselves communicated. We might assume that when he speaks about communication Blackstone means just what Locke does—that is, communication not of but about ideas—yet this interpretation poses certain problems for Blackstone's argument. After all, if communication does occur in the Lockean sense, then by Locke's explicit assertion both parties must already have the same ideas. Even more troublesome for Blackstone's argument is the fact that for Lockean communication to occur between readers and an author, the readers must have come by their ideas the same way the author did—through their own mental labor. Why, then, should the author have any more right to those ideas than the reader? On the other hand, if no communication between readers and author occurs, it is difficult to surmise how a literary work could have value at all. Clearly Black-

stone requires a model of communication, or at least of reading, different from anything we have encountered so far. In fact, Blackstone hints at such a model in his rebuttal of Yates, whose counterargument exposes some of the potential difficulties of Blackstone's position.

In *Tonson v. Collins* (1762), Yates founds his argument against literary property on an innatist understanding of communication. He begins by conceding that mental labor does grant a property right. However, "this, and every other Kind of Property may be rendered common, by the act of the Proprietor," and publication is the act of rendering common one's mental property: "the Author has a Property in his Sentiments, till he publishes them. . . . But from the Moment of Publication, they are thrown into a State of universal Communion." Two English cognates of the Latin *communis*, *common* and *communion*, foreshadow the direction of Yates's argument. He then considers the prerequisites for a property claim, insisting that an item of property must be capable of "separate and exclusive Enjoyment" and that "actual Possession is not always necessary, yet potential Possession is" (333). Though he does not say so explicitly, Yates implies that incorporeal rights such as the right of way across land arise from the possibility of exclusion. Right of way exists, in short, because it may be enforced or denied by corporeal means. But this is not so of ideas:

The original MS. is not, nor ever was, in the Hands of the Defendants. The Books sold are not, nor ever were, the Property of the Plaintiffs. The Paper and Ink belonged to the Defendants. All the Plaintiffs can claim is, the Ideas which the Books communicate. These, when published, the World is as fully in Possession of, as the Author was before. From the moment of Publication, the Author could never confine them to his own Enjoyment. (334)

After the physical book is sold, nothing corporeal remains for the author or publisher to lay claim to; and because Yates takes an inna-

tist view of communication, he insists that the act of communicating an idea destroys any possibility of exclusively possessing it. Filling out Yates's argument from the perspective of a dispositional innatist and universalist, we might say that the author's ideas were already potentially in the possession of all readers and that by publishing them the author actualizes that possession, so that no further legal distinction can be made between the author's possession of the ideas and readers' possession of them. Since the author can no longer exercise any form of exclusive possession over the ideas, they can no longer be subject to property law, which, Yates reiterates, "acts only upon Subjects, where there is a Possibility of separate and exclusive Enjoyment" (334).

Yates's repeated emphasis on "separate and exclusive Enjoyment" indicates that his concern with corporeality and incorporeality has more to do with the specific problem of exclusion than with a vague metaphysical qualm about incorporeal property. However, Blackstone's rebuttal attacks a straw man, focusing only on Yates's discussion of corporeality and entirely neglecting his argument about exclusion. Indeed, neither Blackstone nor Yates seemed to fully realize that their disagreement arose from two dramatically different definitions of the word *idea*. However, Blackstone does offer one analogy that strikes near the heart of their disagreement. Disputing Yates's claim that a published work is, "like Land thrown into the Highway . . . a Gift to the Public," Blackstone counters that publishing a book "is more like making a Way through a Man's own private Grounds, which he may stop at Pleasure; He may give out a Number of Keys, by publishing a Number of Copies; but no Man, who receives a Key, has thereby a Right to forge others, and sell them to other people" (341). In this analogy, the relations among author, idea, work, and reader in Blackstone's view become momentarily crystallized. According to Locke, ideas are not held in common but are the inalienable

property of their creators, having been generated by individual experience and mental labor. A work is not a collection of its author's ideas but rather a key that opens a passage through its author's mind, giving readers a particular kind of access to those ideas. No ideas ever change hands, but, just as one might stroll along a fenced path to view the terrain beyond, readers are able to experience the author's ideas and to develop ideas of their own from that experience. A key is alienable, but the lands to which it grants access remain the property of their owner, and it is a breach of that property to copy the key without permission. Likewise, a work is alienable, but the ideas it grants access to remain the property of their creator; therefore one may possess a work without possessing the right to copy it.

Not only does Blackstone's analogy clarify these relations, it also hints at a model of reading that might help Blackstone defend literary property from a Lockean standpoint; but this is a model of reading as noncommunication. In this model the value of the work comes not from the ideas that it communicates but from the experience that it enables readers to have. Young, too, takes such a view of literary value: "The mind of a man of Genius is a fertile and pleasant field," and the work of genius "opens a back-door . . . into a delicious Garden of Moral and Intellectual fruits and flowers; the Key of which is denied to the rest of mankind" (9, 5). These fruits and flowers never change hands; the pleasure of observing them is enough. The work is an "Amusement" and a "Refuge"; through it the reader is "quieted" and "refreshed" and takes a "pleasing Pause" (5–6); but does the work communicate anything? Perhaps so, but whatever is communicated cannot be passed on; it is not valuable to anyone but the recipient, who cannot transmit the same experience on to another. The pleasures of reading a work of genius simultaneously prove the richness of genius and the impoverishment of passive reception, and they leave little possibility for

intellectual reciprocity. For Young anything communicable is, at best, mere learning—“borrowed knowledge” available for loan by anyone and therefore worth little (36).

If Blackstone’s argument is to be sound, he must agree with Young on this: for communication to occur, whatever is communicated cannot be literary property—even from a Lockean perspective on ideas. For if readers’ ideas are indeed the same as the author’s ideas, as Locke insists is necessary for communication, and if readers produce them by their own labor, as the author did before them, then there remains nothing to be held as property. At this point, the Lockean model of communication begins to look similar to the model of communication implicitly proposed by the Cambridge Platonists. Ideas may come from experience rather than from an “innate cognoscitive power,” but they are effectively common property either way, at least potentially, because otherwise no communication could occur. The equivalence between innatism and empiricism hinted at in Locke’s *Essay* begins to reassert itself here. As long as Blackstone holds on to the notion of communication, he is caught in a double bind—an inescapable consequence of the paradox of communicable property.

Almost eight years after *Tonson v. Col-lins*, Yates and Blackstone again defended opposing positions in the literary-property debate. This time Yates stood on the other side of the bar, as one of the four justices in *Millar v. Taylor*. However, as the sole dissenter in the case, he stood alone, having failed to sway the court against the idea of literary property. The center of the literary-property debates shifted from the English to the Scottish courts, where an innatist view of ideas continued to play a role. *Hinton v. Donaldson* (1773), the case in Scotland that contradicted *Millar v. Taylor*, set the stage for the establishment of the public domain in *Donaldson v. Beckett* (1774). In *Hinton*, Alexander Donaldson’s counsel made a familiar argument:

Suppose two different men compose tables of interest; if both their calculations are exact, they must, according to the rules of arithmetic, turn out to be the same. This observation will apply to most kinds of tables or calculations, as on life-annuities, logarithms, almanacks, &c. If the first publishers of any such works were to have a perpetual monopoly, how absurd would such a position be, and how unjust to the rest of mankind! (*Information* 19)

In a line of reasoning reminiscent of the arguments that Smith, Culverwel, and Cudworth had made a century before, Donaldson’s counsel argued that the universal nature of mathematical truths—whether our knowledge of them is founded on empirical observations or on innate dispositions—directly contradicts the logic of literary property. The possibility of communication is founded on these truths, and thus if communication is possible, literary property cannot exist except as a statutory monopoly. There is only one situation, Donaldson’s counsel argued, “in which it can be figured that an author retains the exclusive enjoyment of his ideas, after having published them, *viz.* if he writes in an unknown language, or character invented by himself, and which he alone can decypher” (*Information* 11). The regime of literary property is a regime of encryption, in which the reader’s understanding of the text is endlessly deferred but the possibility of understanding remains, and in which the proprietary work is held forever just out of its reader’s grasp.

Incommunicable Things

At the beginning of his argument, Donaldson’s counsel in *Hinton v. Donaldson* turned to a question that seemed to involve corporeality. “Property,” he argued, “is defined to be, *jus in re*; and there can be no property without a subject or *corpus*, to which it refers” (*Information* 5–6). Like Yates, he proceeded to argue that this is not an arbitrary restriction; rather, it arises because incorpo-

real entities cannot be exclusively possessed. For that reason, the role of corporeality in his argument is secondary. If we could create an incorporeal thing that could be possessed by one person, to the absolute exclusion of all others, then there could be no objection to incorporeal property along these lines. But Donaldson's counsel dismisses that possibility in his progression from *res* to *corpus*. He began with a definition of property as *jus in re*, right in a thing—a more vaguely defined entity than the *corpus*, the body. By slipping from thing to body, Donaldson's counsel associated thingness with the possibility of exclusive possession, while simultaneously discounting the existence of bodiless things.

However, as I have argued, Locke's epistemology had introduced the possibility that ideas might indeed be bodiless things—incorporeal entities that could be possessed exclusively. In this account, ideas are, at their foundation, mute; they cannot be transferred or exchanged, and there is no marketplace of ideas. Locke backs away from this point of view by arguing that because we have similar bodies and minds, and because we live in the same physical world, we must all have similar ideas; and so even if our ideas themselves refuse to speak, we can talk about them and tell one another how to re-create them through sensation and reflection—through experience.¹² But copyright perpetualists welcomed this refusal to speak, making it the basis of a property claim with respect to texts that, paradoxically, express ideas without communicating them.

In a different kind of essay, I might have traced through these latter two perspectives a genealogy of speech and experience—of voice and phenomenon—to the twentieth century and into the present day. Both perspectives are opposed to an innatist point of view that tries to convince us of the transparency of all communication—as if by talking to one another we are only talking to ourselves. But together they introduce a new opposition that

bears some relation to a set of phenomenological concepts articulated by Edmund Husserl in his *Logical Investigations* (1900). In an argument crucial to his own project and to its influence over later continental philosophy, Husserl distinguishes between two partially overlapping kinds of signs—those that indicate and those that express. Some signs merely indicate by associating one thing with another in a way that is not only noncausal but also not yet linguistic; others communicate meaning in its fullest sense by both expressing and indicating; and still others only express, without indicating or communicating anything. As an example of the last kind of sign, Husserl offers the soliloquy: “There is no speech in such cases,” he writes, “nor does one tell oneself anything” (280). Communication demands telling, and how could we possibly tell our self-present selves something we do not already know? Viewed from some angles, Blackstone's noncommunicative expression looks much like a Husserlian soliloquy. The copyrighted work takes the guise of an author's self-directed speech; an audience may listen in this case, but the author's words have no clear indicative force.

From there, this hypothetical genealogy might follow Jacques Derrida from his rejection of Husserlian self-presence, in *Voice and Phenomenon* (1967), to his later discussion of “the truth of the copyright and the copyright of the truth” in “Limited Inc a b c . . .” (1977 [30])—thus returning to the point from which my discussion began. Derrida might emerge as a rescuer, who by rejecting Husserlian soliloquy also rejects the dangerous legal arguments that created, for a brief period, a legal regime of perpetual copyright.¹³ But these subsequent moves risk diverting our attention from current discussions of phenomenological diversity that give new force to Blackstone's reasoning. Recent years have seen several waves of criticism and theory attentive to communicative disavowal. Speculative realists have reimagined scientific

enterprise as a struggle to force recalcitrant things to indicate what they have so far only expressed in secret; scholars in animal studies have explored the possibility that other species may inhabit a world of meaning inaccessible to us; and affect theorists have defended the rights of human beings to linger on the aspects of personal experience that resist communication and absorption into a shared horizon of the given. Blackstone's arguments show us that these ways of thinking could have proprietary ramifications and that we must pursue them in a way that balances our desire for an open society with our defense of a right not to speak.

In yet another kind of essay, I might have traced a different genealogy, linking these early ways of thinking about idea and expression to modern copyright law. In the twentieth century, it has become an established doctrine in the Anglo-American context that copyright protects not the ideas but the expression of the ideas in a text. This doctrine attempts to distinguish imitations that directly copy specific portions of text, characters, or plotlines from those that borrow only broad outlines, general archetypes, or global plot structures. On a cursory view, the different ways of thinking about communication that I've discussed might look like ancestors of this idea-expression dichotomy. But although there were glimmerings of that distinction in eighteenth-century court cases, modern commentators have been too quick to read those glimmerings as evidence of a stable and well-theorized dichotomy. When William Blackstone asserted in *Tonson v. Col-lins* that "style and sentiment are the essentials of a literary composition," his use of *style* hints at a modern understanding of copyright as protected expression. But there are reasons to doubt that Blackstone is using *style* in this modern sense. By describing the process of composition as "clothing our conceptions in Words," Blackstone echoes lines from Pope's "Essay on Criticism" (1711) that emphasized

not the separability of style and sentiment but their necessary unity in well-crafted writing:

Expression is the *Dress of Thought*, and still
Appears more *decent* as more *suitable*
A vile Conceit in pompous Words exprest,
Is like a Clown in regal Purple drest;
For diff'rent *Styles* with diff'rent *Subjects* sort,
As several Garbs with Country, Town, and
Court. (lines 318–23)

For Pope, and perhaps still for Blackstone, style and sentiment were distinct but closely linked—not dichotomous. By reading these moments in Blackstone's argument as anticipations of modern legal doctrine, we gloss over much of the texture of eighteenth-century thought about copyright.

Instead of projecting the present back onto the past, we might study the beginnings of copyright to think about ways of relaxing the rigid legal distinction between idea and expression—to reconceive that distinction in terms not only of writing but also of reading, imagining reading as a mode of expression as well as a mode of reception—and to see in the course of development of these ideas alternatives to both the modern copyright regime and the critical commonplaces that we have inherited. My approach to the early years of copyright focuses on the broad range of answers that eighteenth-century thinkers offered to the question *What do texts do?* Innatists emphasized the universality of ideas and conceived of texts as tools of communication that functioned smoothly and transparently to link authors to readers; empiricists drew attention to ways those tools broke down, with the hope of repairing them; and copyright perpetualists embraced the tools' breakdown as a way of turning ideas and the texts that expressed them into things. For expediency I have presented these as three competing points of view, but my intention has not been to embrace one of them while discarding the others. Instead, I propose that all three articulate useful ways of thinking about the

encounters between author, text, and reader. For copyright perpetualists, an uncommunicative text speaks to us of foreign experiences in an alien language; for empiricists, a text speaks in a half-learned tongue, tantalizing in its partial coherence; and for innatists, the text whispers familiarly in our ear, transparent in its meaning and obvious in its intent. Our paths through these modes of encounter need not be unidirectional, nor should they be, since each is latent in the other two. Only by a long series of turns and returns through these modes do we learn what texts do.

NOTES

1. E.g., Woodmansee 426, 448 and Rose, *Authors* 142. More recently, Greene and Temple have produced work in this vein. Reform-minded legal historians (e.g., Deazley) have also been influenced by more-materialist points of view.
2. Stern outlines the history of the labor theory of property in Anglo-American copyright law.
3. For examples of such religious thinkers, see Yolton 102.
4. There is some debate about whether the innatism of Plato's *Meno* was indeed dispositional (Rawson).
5. Related views have experienced a resurgence in recent thought about language and cognition (Rogers 203; Samet and Zaitchik).
6. Among Locke's other interlocutors were René Descartes and Edward Stillingfleet, bishop of Worcester (Rickless). Stoicism is sometimes seen as another important strain of innatism to which Locke was responding—"common notions" was a Stoic concept—but Stoicism may be interpreted as broadly compatible with Lockean empiricism (Sellars 74–78).
7. Odell provides a full analysis of Young's analogy between genius and conscience.
8. Gill describes Shaftesbury's indebtedness to the Cambridge Platonists in detail (71–77).
9. For excellent accounts of *Tonson v. Collins* see Deazley 142–47 and Rose, *Authors* 78–86.
10. This argument contradicts a number of modern copyright doctrines, including the strict distinction between idea and expression.
11. Locke himself did not support this line of reasoning (Deazley 3–4).
12. Dawson gives a lucid account of Locke's views on communication (esp. 627–32).
13. The precedent set by *Millar v. Taylor* stood from 1769 to 1774.

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